

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 46946 of 2023

Applicant :- Vivek Rai @ Ravan Rai

Opposite Party :- State of U.P.

Counsel for Applicant :- Manish Kumar Tiwari, Amit Kumar Tripathi

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain, J.

1. Heard Sri Manish Kumar Tiwari, learned counsel for the applicant and Sri Rajeev Dhar Dwivedi, learned AGA for the State.

2. The instant bail application has been filed seeking release of the applicant on bail in Case Crime No. 91 of 2018, under Sections 302, 201, 34 IPC, Police Station Suhawal, District Ghazipur during pendency of the trial.

3. FIR of the present case was lodged against unknown persons on 02.09.2018 and according to the FIR father of the informant had gone on his motorcycle from his home but did not return and next day in the morning his dead body was found.

4. Learned counsel for the applicant submitted that FIR of the present case was lodged in the year 2018 against unknown persons and after investigation in the year 2019 final report was submitted but in the year 2023 applicant and other co-accused persons were arrested in connection to the case crime no. 189 of 2023 under Sections 302, 201, 506, 147 IPC and it is alleged that after arrest they also confessed their guilt with regard to present offence and thereafter the final report submitted by the police was rejected and further investigation was started.

5. He further submits that merely on the basis of the confessional statement after five years applicant and other accused persons have been made accused in the present matter and except their confessional statement there is no other evidence against the applicant on record.

6. He further submits that bail application of co-accused Ravi Rai, Deepak Rai and Ramnaresh Rai have been allowed by the co-

ordinate Benches of this Court and their bail orders have been appended along with instant bail application. He further submits that on merit case of applicant is at par with them.

7. He further submits that although applicant was having previous criminal history of one case but after his arrest in the present case, he was made accused in seven other cases and criminal history of the applicant has been explained in the instant bail application. He further submits that applicant in the present matter is in jail since 15.04.2023 i.e. for more than six months.

8. Per contra, learned AGA opposed the prayer for bail but could not dispute the argument on facts advanced by learned counsel for the applicant.

9. I have heard learned counsel for the parties and perused the record of the case.

10. It appears that after five years on the basis of confessional statement in another case applicant has been made accused in the present matter along with three others and all the three co-accused persons have already been released on bail.

11. Further, however applicant is also having criminal history of seven cases but it appears that when he was made accused in the present matter thereafter he has been made accused in these cases.

12. Further, if case of bail is made out then bail should not be dismissed on the basis of criminal history of the accused.

13. Therefore, considering the facts and circumstances of the case discussed above, in my view, applicant is entitled to be released on bail.

14. Accordingly, without expressing any opinion on the merits of the case, the instant bail application is **allowed**.

15. Let the applicant - **Vivek Rai @ Ravan Rai** be released on bail in the aforesaid case on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned with the following conditions:-

(i) The applicant shall appear before the trial court on the dates fixed, unless his personal presence is exempted.

(ii) The applicant shall not directly or indirectly, make inducement, threat or promise to any person acquainted with the facts of the

case so as to dissuade him from disclosing such facts to the Court or any police officer or tamper with the evidence.

(iii) The applicant shall not indulge in any criminal and anti-social activity.

16. In case of breach of any of the above condition, the prosecution will be at liberty to move an application before this Court for cancellation of the bail of the applicant.

17. It is clarified that the observations made herein are limited to the facts brought in by the parties pertaining to the disposal of bail application and the said observations shall have no bearing on the merits of the case during trial.

Order Date :- 3.11.2023

AK Pandey